

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GARY T. LEAR,

Petitioner,

v.

ORDER
06-CV-750

THOMAS POOLE,
Superintendent, Five Points Correctional Facility,

Respondent.

This case was referred to Magistrate Judge Victor E. Bianchini, pursuant to 28 U.S.C. § 636(b)(1). Plaintiff filed a petition for a writ of habeas corpus on November 14, 2006, pursuant to 28 U.S.C. § 2254. August 17, 2009, after respondent answered the petition, petitioner filed a motion to amend his petition. On January 20, 2010, Magistrate Judge Bianchini filed a Report and Recommendation, recommending that petitioner's request for a writ of habeas corpus be denied.

Plaintiff filed objections to the Report and Recommendation on March 3, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Bianchini's Report and Recommendation, petitioner's petition for a writ of habeas corpus is denied and the petition is dismissed.

In addition, because the issues raised here are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the Court concludes that petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly the Court denies a certificate of appealability.

The Court also hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. U.S.*, 369 U.S. 438, 82 S. Ct. 917, 8 L. Ed.2d 21 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

The Clerk of Court shall take all steps necessary to close the case

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: May 17, 2010